

(1) *General rule.* A MAC ruling on a subpoena request is not subject to immediate review by the Secretary.

(2) Exception. (i) To the extent a subpoena compels disclosure of a matter for which an objection based on privilege, or other protection from disclosure such as case preparation, confidentiality, or undue burden, was made before the MAC, the Secretary may review immediately that subpoena or portion of the subpoena.

(ii) Upon notice to the MAC that a party or non-party, as applicable, intends to seek Secretary review of the subpoena, the MAC must stay all proceedings affected by the subpoena.

(iii) The MAC determines the length of the stay under the circumstances of a given case, but in no event is less than 15 days after the day on which the MAC received notice of the party or non-party's intent to seek Secretary review.

(iv) If the Secretary grants a request for review, the subpoena or portion of the subpoena, as applicable, is stayed until the Secretary issues a written decision that affirms, reverses, modifies, or remands the MAC's action for the subpoena.

(v) If the Secretary does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the MAC's action stands.

(f) *Enforcement.* (1) If the MAC determines, whether on its own motion or at the request of a party, that a party or non-party subject to a subpoena issued under this section has refused to comply with the subpoena, the MAC may request the Secretary to seek enforcement of the subpoena in accordance with section 205(c) of the Act, 42 U.S.C. 405(c).

(2) Any enforcement request by the MAC must consist of a written notice to the Secretary describing in detail the MAC's findings of noncompliance and its specific request for enforcement, and providing a copy of the subpoena and evidence of its receipt by certified mail by the party or nonparty subject to the subpoena.

(3) The MAC must promptly mail a copy of the notice and related documents to the party or non-party subject to the subpoena, and to any other

party and affected non-party to the appeal.

(4) If the Secretary does not grant review or take own motion review within the time allotted for the stay, the stay is lifted and the subpoena stands.

§ 405.1124 Oral argument.

A party may request to appear before the MAC to present oral argument.

(a) The MAC grants a request for oral argument if it decides that the case raises an important question of law, policy, or fact that cannot be readily decided based on written submissions alone.

(b) The MAC may decide on its own that oral argument is necessary to decide the issues in the case. If the MAC decides to hear oral argument, it tells the parties of the time and place of the oral argument at least 10 days before the scheduled date.

(c) In case of a previously unrepresented beneficiary, a newly hired representative may request an extension of time for preparation of the oral argument and the MAC must consider whether the extension is reasonable.

(d) The MAC may also request, but not require, CMS or its contractor to appear before it if the MAC determines that it may be helpful in resolving the issues in the case.

(e) The MAC will not draw any inference if CMS or a contractor decides not to participate in the oral argument.

§ 405.1126 Case remanded by the MAC.

(a) *When the MAC may remand a case.* Except as specified in § 405.1122(c), the MAC may remand a case in which additional evidence is needed or additional action by the ALJ is required. The MAC will designate in its remand order whether the ALJ will issue a final decision or a recommended decision on remand.

(b) *Action by ALJ on remand.* The ALJ will take any action that is ordered by the MAC and may take any additional action that is not inconsistent with the MAC's remand order.

(c) *Notice when case is returned with a recommended decision.* When the ALJ sends a case to the MAC with a recommended decision, a notice is mailed to the parties at their last known address. The notice tells them that the